

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 207 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIMATLAL RANCHHODBHAI PATEL

Versus

CHIRAG PRAVINBHAI SHAH

Appearance:

MR MA PAREKH for Petitioner
UNSERVED-REFUSED (R) for Respondent No. 1
DAKSHESH MEHTA for Respondent No. 3
RULE SERVED BY DS for Respondent No. 4, 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. This is an application under Section 115 of the Code of Civil Procedure, 1908, challenging the order dated 14.12.1999 of the Motor Accident Claims Tribunal, Ahmedabad, under section 140 of the Motor Vehicles Act,

below application Exh.6 in M.A.C.Petition No.744 of 1998. The learned Tribunal has allowed the said application of the petitioner by directing that the owner and driver of one vehicle should pay 50% of the amount and the owner, driver and insurance company of the second vehicle should pay remaining 50% amount awarded by the Tribunal under the said order.

2. Feeling aggrieved by the said order dated December 14, 1999, the petitioner has preferred this revision application. Rule was made returnable on 4.4.2000. Notice of rule has been duly served.

3. Learned advocate for the insurance company has argued that when two vehicles have been involved, the tribunal can apportion the liability between the owner, driver and insurance company of the two vehicles. That since the scooter was involved in the accident, the liability has been put on the shoulder of the driver and owner of the said vehicle. According to the learned advocate for the respondent No.3, the tribunal have not committed any illegality and, therefore, the revision is liable to be dismissed.

4. I have considered the said arguments but it is not possible for me to agree with the same. So far internal liability is concerned, the tribunal may fix the liability inter-se between driver, owner and insurance company of the two vehicles. But so far injured is concerned, all the opponents are joint tortfeasors and all of them are jointly and severally liable to pay the compensation. There cannot be any apportionment of the liability. Therefore it is very clear that the tribunal had no jurisdiction to apportion the liability between the driver, owner and insurance company of the two vehicles. The tribunal ought to have fix the liability holding all of them to be jointly and severally liable to compensate the petitioner. In aforesaid view of the matter, the tribunal has committed jurisdictional error in apportioning the liability. The revision is, therefore, required to be allowed.

5. In the facts and circumstances of the case, this revision application is allowed. The order passed by the learned Tribunal dated 14.12.1999 below application Exh.6 in M.A.C.P.No.744/98 is modified to the extent that all the respondents shall be jointly and severally responsible and liable to pay the amount awarded by the tribunal to the petitioner. On such deposit, the petitioner will be at liberty to make an application for withdrawal and the tribunal will dispose of the said

application in light of the background of the guidelines issued by this Court as well as by the Hon'ble Apex Court. Rule is made absolute to the aforesaid extent. Considering the facts and circumstances of the case, there shall be no order as to costs.

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